

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

TANIELLE SHURNEY,

Plaintiff,

NO. CA 05-196E

vs.

SCOTT ENTERPRISES INCORPORATED
t/d/b/ a ECONOLOGE/SPLASH LAGOON

SEAN PIERCE, Individually and in his capacity
As a Trooper of the Pennsylvania State Police

JOHN DOE, Individually and in his capacity as
The Supervisor of Trooper Sean Pierce of the
Pennsylvania State Police.

Defendants

MOTION TO COMPEL OR IN THE
ALTERNATIVE MOTION FOR SANCTIONS

And now, come the defendants, Scott's Econo Inn, Inc. and Scott's Splash Lagoon, Inc. by their attorneys, and set forth this Motion To Compel, or in the alternative, Motion For Sanctions directed to Plaintiff and in support thereof set forth the following:

1. Plaintiff Tanielle Shurney brings this 1983 action on allegations that on 7/3/2004 she was falsely arrested and incarcerated at the instigation of the defendants EconoLodge/Splash Lagoon. Plaintiff demands injunctive relief, compensatory damages, punitive damages and attorney fees and cost of suit.

2. Plaintiff placed a reservation on 6/25/2004, and during the course of that registration, the reservationist at Splash Lagoon Econolodge was provided with a credit/debit card number

that did not in fact belong to plaintiff or plaintiff's relatives and was not authorized by the account holder.

3. In fact as disclosed by deposition of officer Jon Hurley and Ms. Tonya Traylor the debit card upon which plaintiffs reservation was made belonged to Tonya Traylor, who filed a complaint with the Streetsboro Police Department that her bank account had been improperly accessed by an individual or individuals unknown to her who had placed charges for the Splash Lagoon, as well as other charges, against her debit account at Key Bank without authorization. The Streetsboro Police Department then began its criminal investigation of credit card fraud, and contacted the Splash Lagoon Reservation Center and the Pennsylvania State Police for assistance in its investigation.

4. Defendants, Scott's Econo Inn, Inc. and Scott's Splash Lagoon, Inc. served plaintiff with discovery. In particular, defendant Scott's Splash Lagoon served plaintiff with discovery interrogatories and request for production to ascertain the scope and nature of the plaintiffs claim. A copy of this discovery is attached to this motion as exhibit "A." Further, defendant Scott's Econo Inn, served plaintiff with interrogatories requesting plaintiff to provide the address for Tracey Smith, the individual identified by plaintiff as her cousin who allegedly provided the debit card number used in the registration. Copy of said interrogatories are attached hereto as exhibit "B". Finally, defendant Scott's Econo Inn, requested authorization from plaintiff to secure credit information to determined if in fact plaintiff had no credit card or debit card, which she explained was the reason for not using her own card at the time of making the reservation. At the initial case management conference the court had instructed plaintiff counsel to provide the authorization. Relevant portion of the transcript is attached hereto as exhibit "C" (Case Status

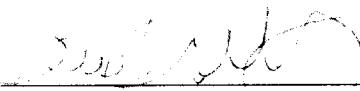
Conference --Monday, November 21, 2005 pages 11 and 12) and a copy of defendant's request for authorizations are attached hereto as exhibits "D" and "E".

5. Despite requests from Defense counsel, Plaintiff has failed and refused to answer any of the requested discovery. Particularly prior to the depositions taken of Tonya Traylor and Officer Jon Hurley on January 11, 2006, defendants again renewed their demand that Plaintiff provide responses to the discovery request. Plaintiff has ignored and continues to ignore defendants' requests.

6. Defendants have been severely prejudiced in their preparation for trial by reason of Plaintiffs continued refusal to answer interrogatories and provide the requested authorization. Further Plaintiff's refusal to return the authorization is in violation of this court's directive made in the case management conference.

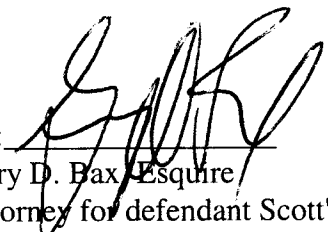
7. Defendants respectfully request that this Court enter appropriate sanctions against plaintiff for failing to supply their authorization as directed by the Court, including reimbursing counsel fees for the cost of preparing and presenting this Motion. Further, Defendants request that this court enter order directing plaintiff to answer the outstanding interrogatories within five business days or suffer further sanctions as deemed appropriate by the Court.

Respectfully submitted,

By: 
Gerald J. Hutton, Esquire
Attorney for defendant Scott's Econo Inn, Inc.

BASHLINE AND HUTTON
Suite 3500 – One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

Ph: (412) 434-0201

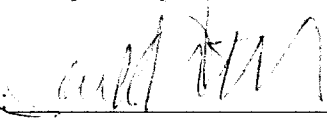
By: 
Gary D. Bax, Esquire
Attorney for defendant Scott's Splash
Lagoon, Inc.

Gary D. Bax, Esquire
Suite 202
900 State Street
Erie, PA 16501

Ph: (814) 459-0234

CERTIFICATE OF CONFERENCE

I, Gerald J. Hutton, attorney for defendant hereby certify that I have attempted to resolve the dispute contained in the above motion for sanctions/motion to compel by conferring with plaintiffs, counsel, A. J. Adams. In particular, I certify that I had made personal request on Attorney Adams to provide answers to interrogatories and return the verification on January 11, 2006, at the time of the depositions of Officer Hurley and witness Tonya Traylor. Defendant further certifies making a request for the authorization at the time of the case management conference, and at that time the Court directed plaintiff to supply the authorization. Counsel for Defendant Scott's Splash Lagoon Inc. requested responses to the propounded Interrogatories and Requests for Production by correspondence to plaintiff's counsel on January 16, 2006. Despite these requests, plaintiff has failed and continues to refuse to answer the outstanding discovery.

By: 
Gerald J. Hutton, Esquire

Date: 
2-15-06

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Plaintiff,

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SEAN PIERCE, Individually and in his capacity
As a Trooper of the Pennsylvania State Police

JOHN DOE, Individually and in his capacity as
The Supervisor of Trooper Sean Pierce of the
Pennsylvania State Police.

Defendants

ORDER OF COURT

AND NOW, this _____ day of _____, 2006 upon consideration of the Defendants Motion to Compel, or in the alternative, Motion for Sanctions, it is hereby Ordered, Adjudged and Decreed that Plaintiff shall answer the outstanding interrogatories and Request for Production of documents from Scott's Econo Inn Inc. and Scott's Splash Lagoon within five (5) business days or suffer further sanctions as deemed appropriate by the Court.

It is further Ordered , Adjudged and Decreed that sanctions are imposed upon the plaintiff for failing to supply authorizations as directed by the Court. These sanctions include reimbursement of counsel fees in the amount of \$_____to Gerald J. Hutton, Esquire and in the amount of \$_____ to Gary Bax, Esquirefor the cost of preparing and presenting the Motion.

By the Court,

_____.J.

CERTIFICATE OF SERVICE

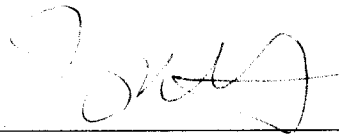
I do hereby certify that a true and correct copy of the foregoing MOTION TO COMPEL OR IN THE ALTERNATIVE MOTION FOR SANCTIONS was served via U.S. First Class Mail, postage pre-paid, on this 15th day of February, 2006, upon the following counsel of record:

Mr. A.J Adams Esq.
602 West 9TH Street
Erie, PA 16502

(Attorney for Plaintiff)

Bax, Gary D Esq.
Suite 202
900 State Street
Erie, PA 16501

(Attorney For Scott's Spash Lagoon, Inc.)



Gerald J. Hutton
Attorney for Defendant
Scott's Econo Inn, Inc.

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